THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.24184 OF 1997

ORDER:

This writ petition is filed seeking a *mandamus* declaring the order of the 3rd respondent-Assistant Director of Survey and Land Records dated 23.8.1997 under which the supplementary sethwar earlier issued vide proceedings dated 28-12-1994 in respect of Sy.No.1963 of Nirmal Village was cancelled, as arbitrary and illegal.

The brief facts of the case, which are not in dispute, are as under:

One Sardhar Khan was the original khatadhar of 0.24 gts of land situated in Sy.No.1744 of Nirmal village. During re-survey of Nirmal, conducted in the year 1955-56, the old Sy.No.1744, measuring 0.24 gts was co-related to new Sy.No.1962, measuring 0.9 gts. Similarly, the adjoining old Sy.No.1745, measuring 0.30 gts was co-related to new Sy.No.1963, measuring 0.39 gts. Thus, whereas an excess area of 0.9 gts was included in new Sy.No.1963, an extent of 0.15 gts was reduced in new Sy.No.1962. The settlement pursuant to the re-survey was implemented in the revenue records in the year 1972.

The writ petitioner, who claims to be the grandson of Sardhar Khan, made an application on 8.8.1994 under Section 87 of the A.P. Telangana Land Revenue Act, 1317-F (for short, "the Act") before the 1st respondent-Commissioner, Survey, Settlement and Land Records, A.P., Hyderabad for correction of the alleged survey error claiming that 0.9 gts of land in his possession was wrongly included in new Sy.No.1963, in the re-survey. In pursuance thereof, the 1st respondent called for a report from the 3rd respondent-Assistant Director, Survey, Settlement and Land Records, Adilabad. After conducting due enquiry, the 3rd respondent submitted a report dated 31.8.1994 stating

that the excess area of 0.9 gts in new Sy.No.1963 was a part of old Sy.No.1744. It was also found by the 3rd respondent that the writ petitioner was in possession of the said 0.9 gts of excess land in new Sy.No.1963. Accordingly, a proposal was submitted for deletion of the said 0.9 gts of excess area from new Sy.No.1963 and include the same in new Sy.No.1962.

On the basis of the same, the 1st respondent vide proceedings dated 16.9.1994, directed necessary alterations. Accordingly, a supplementary sethwar was issued by the 3rd respondent on 28.12.1994 showing the name of Sri Sardhar Khan in respect of 0.9 gts in new Sy.No.1962/2. In pursuance thereof, the 4th respondent/Mandal Revenue Officer, Nirmal, implemented the entries in the revenue records.

While so, on 9.4.1997 respondents 6 and 7 filed a petition before the Collector, Survey and Land Records alleging that the supplementary sethwar dated 28.12.1994 issued by the then Assistant Director, Survey, Settlement and Land Records in favour of Sardhar Khan was illegal and contrary to the statutory provisions and requesting to cancel the same. They claimed possession in respect of the said 0.9 gts of land in respect of which the supplementary sethwar was issued in favour of Sri Sardhar Khan on 28.12.1994. It was their case that late Sardhar Khan bequeathed 0.15 gts out of his land in old Sy.No.1744 in favour of one Afiz Khan and the remaining 0.9 gts was sold to the father of the 5th respondent. The said 0.9 gts was accordingly, added to the account of the father of the 5th respondent during re-survey conducted in the year 1955-56 on the basis of the transfer made in his favour by late Sardhar Khan. Since the father of the 5th respondent was already in possession of 0.30 gts of land in old Sy.No.1745, after re-survey, the extent of new Sy.No.1963 (co-related to old Sy.No.1745) was enhanced to 0.39 gts. It is claimed that the name of the 5th respondent was recorded as pattadar in respect of the

said 0.39 gts and the same was purchased by respondents 6 and 7 under a registered sale deed dated 19.9.1996 from the 5th respondent. According to them, the remaining 0.15 gts in old Sy.No.1744 bequeathed by late Sardhar Khan in favour of Afiz Khan is co-related to new Sy.Nos.1961 and 1962 after re-survey to an extent of 0.6 gts and 0.9 gts respectively.

Having entertained the said Objection Petition dated 9.4.1997 filed by the respondents 6 and 7, the Collector, Survey and Land Records, Adilabad, called for reports from the respondents 3 and 4 herein. Pursuant thereto, the 3rd respondent after conducting a panchanama and after verification of records submitted his remarks pointing out that the then Assistant Director, Survey, Settlement and Land Records had erroneously recommended for deletion of 0.9 gts from new Sy.No.1963. The 4th respondent-Mandal Revenue Officer, Nirmal, having conducted spot inspection and local enquiry, submitted his report dated 5.6.1997 recommending cancellation of supplementary sethwar dated 28.12.1994 issued in favour of late Sardhar Khan. On the basis of the same, the 3rd respondent passed the impugned order dated 23.8.1997, thereby cancelling the supplementary sethwar dated 28.12.1994.

The impugned order is assailed by the petitioner primarily on the ground that the said order, passed without any notice to the petitioner, is arbitrary, illegal apart from being violative of principles of natural justice. It is also contended that the order dated 16.9.1994 passed by the Commissioner of Survey, Settlements & Land Records cannot be reviewed by the Collector, Survey & Land Records, and, therefore, the impugned order, being without jurisdiction, is liable to be set aside on that ground also.

In the counter-affidavit filed on behalf of the respondents 1 to 3, the fact that the impugned order was passed without notice to the petitioner has not been disputed. However, it is contended that

since the earlier order dated 16.9.1994 was erroneous and contrary to the provisions of Section 87 of the Act, the consequential supplementary sethwar dated 28-12-1994 was rightly cancelled so as to correct the mistake committed earlier.

In the counter-affidavit filed on behalf of the respondents 5 to 7 also, it is not disputed that there was no notice to the petitioner before passing the impugned order. However, the impugned order was sought to be justified on merits and it was also contended that since an alternative remedy by way of an appeal is provided under Section 158 of the Act against the impugned order, without exhausting the said remedy, the petitioner cannot maintain this writ petition.

Having heard the learned Counsel for both the parties and having regard to the undisputed fact that the impugned order was passed without notice to the petitioner, I find force in the submission of the learned counsel for the petitioner that the impugned order being in violation of the principles of natural justice is liable to be set aside on that ground alone.

As could be seen, on an application made by the petitioner, the survey error was corrected and a supplementary sethwar was issued on 28.12.1994 showing the name of late Sardar Khan, claimed to be the grandfather of the petitioner. The said order was passed in exercise of the powers conferred under Section 87 of the Act which provides for correction of any wrong entry of a pattadar's name in the settlement records.

Even assuming that the said order was erroneous on any ground whatsoever, the same has to be reversed / varied following due process of law. It is to be noted that both under Section 158 and Section 166 of the Act which provide for the remedies of appeal and review from an order of Revenue Officer respectively, an opportunity of being heard to the opposite party is mandatory. Even otherwise, the rights accrued to the petitioner by virtue of the order dated 16.9.1994 and the consequential supplementary sethwar dated

28.12.1994 cannot be nullified on any ground whatsoever without giving him a reasonable opportunity to raise his objections.

However, the learned counsel appearing for the respondents 5 to 7, contended that the order dated 16.9.1994, purportedly passed in exercise of the powers under Section 87 of the Act, having been passed by an authority who has no jurisdiction, was a nullity and, therefore, the mere fact that there was no notice to the petitioner before passing the impugned order was of no consequence. While elaborating his contention, the learned counsel submitted that the Commissioner of Survey, Settlements & Land Records, who is the competent authority, to exercise the power of the Government to grant sanction under Section 87 of the Act in cases of applications made beyond two years from the introduction of the settlements can, under no circumstances, order correction of the survey errors. In support of his submission, the learned counsel placed reliance upon the decisions of this Court in KHAIRUDDIN ALI vs. STATE OF A.P.[1] and K. GNANESHWAR v. STATE OF ANDHRA PRADESH[2]. The learned counsel also contended that as a matter of fat the petitioner who sought correction of survey error after a long lapse of more than 20 years after the introduction of the settlement cannot be granted any relief since he failed to seek condonation of delay as required under the second part of Section 87 of the Act.

In view of the conclusion already reached by this Court that the impugned order is in violation of the principles of natural justice, it is not necessary for this Court to express any opinion on the above contentions raised by the learned counsel for the respondents 5 to 7.

Accordingly, while leaving it open to the parties to urge the above points at appropriate stage before the proper forum, the impugned order is hereby set aside and the Writ Petition is disposed of with a direction to the 2nd respondent to make a fresh enquiry, after due notice to the petitioner as well as the respondents 5 to 7, and pass appropriate orders in accordance with law. Both the parties are

at liberty to raise all the grounds as available under law including the maintainability of the proceedings initiated at the instance of the respondents 5 and 7, in which event the 2nd respondent shall consider the same and pass appropriate orders in accordance with law. No costs.

23.11.2007.

Kgr

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.24184 OF 1997

23rd November, 2007

Between:

M.A. Khaliq. .. Petitioner.

And

Commissioner, Survey, Settlement and
Land Records, Government of A.P.,
Hyderabad and others. … Respondents

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[1] 1999 (2) ALT 727 (D.B.)

[2] 2005 (4) ALT 130